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United States District Court Central District of California

CYNTHIA ROBINSON,

Plaintiff,

v.

CLEAR RECON CORP, U.S. BANK

TRUST, N.A. as Trustee for LSF8 Master

Participation Trust, HOUSEHOLD

FINANCE CORPORATION OF

CALIFORNIA, and DOES 1–50

INCLUSIVE,

Defendants.

Case No. 2:15-cv-00242-ODW (AGRx)

ORDER SUA SPONTE
REMANDING ACTION

I. INTRODUCTION

On November 25, 2014, Plaintiff Cynthia Robinson filed a pro se Complaint in state court against Defendants Clear Recon Corp (“Clear Recon”), US Bank Trust (“US Bank”), and Household Finance Corporation (“Household”), to prevent foreclosure on her property. On January 12, 2015, Defendants removed the action to federal court under diversity jurisdiction. Subsequently, US Bank moved to dismiss the First Amended Complaint (“FAC”), which was opposed by Plaintiff. During review of the Motion, the Court reexamined jurisdiction and now questions whether

1 federal jurisdiction exists. For the reasons discussed below, the Court, **REMANDS**
 2 this action for lack of diversity jurisdiction.

3 **II. FACTUAL BACKGROUND**

4 On May 3, 2007, Plaintiff obtained a mortgage loan in the principal amount of
 5 \$273,765.78 from Household, secured by a Deed of Trust (“DOT”) encumbering the
 6 property located at 506 South Grevillea, Unit #1, Inglewood, CA 90301, and recorded
 7 on May 8, 2007. (First Am. Compl. (“FAC”) ¶ 21, ECF No. 13.) The DOT securing
 8 the loan identified Stewart Title Guaranty as trustee and Household as beneficiary.
 9 (Def.’s Req. for Judicial Notice (“RJN”) Ex. A, ECF No. 14-2.) US Bank alleges that
 10 Plaintiff defaulted on the loan, and foreclosure proceedings commenced. (*See* Mot. to
 11 Dismiss (“MTD”), ECF No. 14 (stating that “Installment of Principal and Interest plus
 12 impounds and/or advances . . . became due on 3/8/2011 plus late charges.”).)

13 Clear Recon substituted Stewart Title as trustee (FAC ¶ 24; RJN Ex. B), and
 14 recorded a Notice of Default (“NOD”) on December 18, 2013, showing the loan in
 15 arrears by \$66,585.46. (FAC ¶ 26; RJN Ex. C.) Household later assigned its
 16 beneficial interest to US Bank. (FAC ¶ 27, Ex. 1 at 48.) On August 18, 2014, Clear
 17 Recon recorded the Notice of Trustee’s Sale, and thereafter rescheduled the sale for
 18 December 2014. (FAC ¶ 30.) From the parties’ submissions, it appears no
 19 foreclosure sale has taken place.

20 In Plaintiff’s state court complaint, she asserted ten causes of action against all
 21 Defendants with the exception of one.¹ On January 12, 2015, US Bank removed the
 22 case to federal court (ECF No. 1), then moved to dismiss on January 15, 2015 (ECF
 23 No. 7). That motion was granted with leave to amend (ECF No. 12). The First
 24 Amended Complaint (“FAC”) was submitted on April 22, 2015 (ECF No. 13), and
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 27 ¹ The causes of action include: (1) violation of California Homeowner Bill of Rights, (2) violation of
 28 California Civil Code § 2923.5, (3) injunctive relief, (4) fraud in the concealment, (5) intentional
 infliction of emotional distress, (6) slander of title, (7) quiet title, (8) declaratory relief, (9)
 rescission, and (10) violation of California Business and Professions Code § 17200 et seq.
 Rescission pleaded only against Household.

1 again US Bank moved to dismiss on May 11, 2015 (ECF No. 14). Plaintiff untimely
 2 filed her opposition to which US Bank replied.² (ECF Nos. 16, 18.) With that Motion
 3 pending, upon further review the Court remands based upon lack of subject-matter
 4 jurisdiction.

5 III. LEGAL STANDARD

6 Federal courts have limited jurisdiction, having subject-matter jurisdiction only
 7 over matters authorized by the Constitution and Congress. U.S. Const. art. III, § 2, cl.
 8 1. There are two ways a party can bring a case within the jurisdiction of federal
 9 courts: (1) diversity of citizenship under 28 U.S.C. § 1332, and (2) federal question
 10 under 28 U.S.C. 1331. Federal courts have diversity jurisdiction over civil actions
 11 where the amount in controversy exceeds \$75,000, exclusive of interest and costs, and
 12 the case is between citizens of different states. 28 U.S.C. § 1332. “[A]ny civil action
 13 brought in a State court of which the district courts of the United States have original
 14 jurisdiction, may be removed by the defendant or the defendants, to [a] district court .
 15 . . .” 28 U.S.C. § 1441(a). A removing defendant bears the burden of establishing
 16 that removal is proper. *E.g., Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992)
 17 (“The strong presumption against removal jurisdiction means that the defendant
 18 always has the burden of establishing that removal is proper.”) (internal quotation
 19 marks omitted). Moreover, if there is any doubt regarding the existence of subject
 20 matter jurisdiction, the court must resolve those doubts in favor of remanding the
 21 action to state court. *E.g., Gaus*, 980 F.2d at 566 (“Federal jurisdiction must be
 22 rejected if there is any doubt as to the right of removal in the first instance.”).

23 Further, “[i]f at any time before final judgment it appears that the district court
 24 lacks subject matter jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c).
 25 In fact, “[i]f a district court lacks subject matter jurisdiction over a removed action, it
 26 has the duty to remand it, for ‘removal is permissible only where original jurisdiction

28 ² Defendants Clear Recon and Household have not made appearance in federal court as of date of
 this order.

1 exists at the time of removal or at the time of the entry of final judgment”
 2 *Sparta Surgical Corp. v. Nat'l. Ass'n of Sec. Dealers, Inc.*, 195 F.3d 1209, 1211 (9th
 3 Cir. 1996) (quoting *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523
 4 U.S. 26, 43 (1998)). Under 28 U.S.C. § 1441(a), an action must “be fit for federal
 5 adjudication when the removal petition is filed.” *Lexecon*, 523 U.S. at 43. “If the
 6 court determines at any time that it lacks subject-matter jurisdiction, the court must
 7 dismiss the action.” Fed. R. Civ. P. 12(h)(3); *see also Snell v. Cleveland, Inc.*, 316
 8 F.3d 822, 826 (9th Cir. 2002) (“Federal Rule of Civil Procedure 12(h)(3) provides that
 9 a court may raise the question of subject matter jurisdiction, *sua sponte*, at any time.”)
 10 (footnote omitted).

11 IV. DISCUSSION

12 The present case poses no federal question therefore subject-matter jurisdiction
 13 is predicated on diversity of citizenship. The Court has original jurisdiction over
 14 controversies between citizens of different states when the matter in dispute exceeds
 15 the sum value of \$75,000. 28 U.S.C. § 1332. There is no dispute over the amount in
 16 controversy, thus the Court looks to the diversity of the parties. Complete diversity is
 17 required to maintain jurisdiction. *Exxon Mobil Corp. v. Allapattah Serv., Inc.*, 545
 18 U.S. 546, 553 (2005) (“[T]he presence in the action of a single plaintiff from the same
 19 State as a single defendant deprives the district court of original diversity jurisdiction
 20 over the entire action.”).

21 The only Defendant whose citizenship is not diverse to Plaintiff is Clear
 22 Recon.³ Plaintiff is a citizen of California. (ECF No. 1, Notice of Removal (“NOR”)
 23 ¶ 5; FAC ¶ 15.) Clear Recon is a corporation existing under the laws of the State of
 24 California. (FAC ¶ 16.) Accordingly, Clear Recon and Plaintiff are not diverse
 25 because they are citizens of the same state. However, US Bank states that Clear

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 27 ³ US Bank is a national association whose main office location and citizenship is Wilmington,
 28 Delaware. (NOR ¶ 5.) Household is incorporated in Delaware and its principal place of business is
 in Illinois. (*Id.*) The Court accepts the statement of citizenship for US Bank and Household,
 establishing that they are diverse to Plaintiff.

1 Recon is a nominal party and is not required to appear in the action or join in the
 2 removal. (NOR ¶ 5.)

3 In general, all parties named in the pleadings are considered in the diversity
 4 analysis. *See Osborne v. Bank of the United States*, 22 U.S. 738, 857 (1824);
 5 *Morongo Band of Mission Indians v. California State Bd. Of Equalization*, 858 F.2d
 6 1376, 1380 (9th Cir. 1988) (diversity is determined by citizenship of parties as of
 7 filing of the original complaint). But the Ninth Circuit instructs courts to “ignore the
 8 citizenship of nominal or formal parties who have no interest in the action, and are
 9 merely joined to perform the ministerial act of conveying the title if adjudged to the
 10 complainant.” *Prudential Real Estate Affiliates, Inc. v. PPR Realty, Inc.*, 204 F.3d
 11 867, 873 (9th Cir. 2000).

12 US Bank incorrectly believes that Clear Recon is a nominal party merely by
 13 filing a declaration of nonmonetary status (“DNMS”) and goes no further to meet the
 14 burden of establishing that removal was proper.⁴ (NOR ¶ 5.) As an initial matter,
 15 “[i]n the Court’s experience, trustees almost uniformly abuse non-monetary status,
 16 filing notices of non-monetary status even in cases where the trustee was clearly sued
 17 for its own alleged wrongful acts or omissions.” *Kendall v. Wells Fargo Bank, N.A.*,
 18 No. CV 12-7229 DSF (PJWx), 2012 WL 10649162, *1 n. 1 (C.D. Cal. Aug. 30,
 19 2012). This experience seems to endure.

20 Notwithstanding, the Court need not adopt the procedural mechanism of
 21 California Civil Code section 2924l even if the nonmonetary status was perfected in
 22 accordance with that statute. *Hanna v. Plumer*, 380 U.S. 460, 465 (1965) (explaining
 23 that *Erie R.R. Co. v. Tompkins* held that *federal* courts with diversity jurisdiction are
 24 bound by state ‘substantive’ law and follow *federal* procedural law). California Civil
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26 ⁴ Clear Recon filed a DNMS on January 6, 2015 (NOR ¶ 5), and US Bank filed the NOR on January
 27 12, 2015 (ECF No. 1). Clear Recon never became a nominal party under California law. *E.g., Sun*
 28 *v. Bank of Am. Corp.*, No. SACV 10-0004 AG MLGX, 2010 WL 454720, *2 (C.D. Cal. Feb. 8,
 2010) (holding that a “party that files a [DNMS] does not actually become a nominal party until 15
 days pass without objection”).

1 Code section 2924l is purely a procedural devise designed to eliminate the need for a
 2 nominal party to participate in an action as it sets the procedure for filing and serving,
 3 the time for objections, and result of a party's failure to timely object. Cal. Civ. Code
 4 § 2924l. California procedure requires no actual showing that the filing party is
 5 nominal and only declares that the party has a "reasonable belief" that it "has been
 6 named in the action or proceeding solely in its capacity as trustee, and not arising out
 7 of any wrongful acts or omissions on its part in the performance of its duties as
 8 trustee." *Segura v. Wells Fargo, N.A.*, No. CV-14-04195-MWF (AJWx), 2014 WL
 9 4798890, *3 (C.D. Cal. Sept. 26, 2014), quoting Cal. Civ. Code § 2924l(a). Because
 10 it is well established and recognized that *federal* court procedure is governed by
 11 *federal* law (see *Erie R.R. Co.*, 304 U.S. 64 (1938)), this Court is not bound by the
 12 mechanism of a DNMS. *See Segura*, 2014 WL 4798890, at *3.

13 Defendants cited two district court cases but offered no analysis to support its
 14 conclusion that Clear Recon is a nominal party, or that the district court cases cited
 15 interpreted the nominal party exception to diversity jurisdiction correctly.⁵ This
 16 deficiency, coupled with the Complaint and FAC specifically stating claims against
 17 Clear Recon pertaining to their acts or omissions, casts doubt that Clear Recon is in
 18 fact a nominal party. *Kendall*, 2012 WL 10649162, *1 n. 1. Therefore, the Court's
 19 review of the NOR and pleadings clearly shows that this Court does not have diversity
 20 jurisdiction over the matter. *See* 28 U.S.C. § 1441(a).

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 27 ⁵ Defendants cite *Amaro v. Option One Mortg. Corp.*, 2009 WL 103302 (C.D. Cal. Jan. 14, 2009)
 28 and *See Hafiz v. Greenpoint Mortgage Funding, Inc.*, 652 F.Supp.2d 1050, 1052 (2009) in their
 Notice of Removal arguing Clear Recon's citizenship should not be considered for diversity analysis
 because they complied with state procedural law.

V. CONCLUSION

For the reasons discussed above, the Court **REMANDS** this action to Superior Court of the State of California for the County of Los Angeles, 825 Maple Avenue, Torrance California 90503, for lack of subject matter jurisdiction pursuant to 28 U.S.C. § 1447(c). All pending motions are **VACATED**. The Clerk of Court will close this case.

IT IS SO ORDERED.

July 9, 2015

**OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE**